

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-268-T

Application of Midlands Movers, LLC for a
 Class E (Household Goods) Certificate of
 Public Convenience and Necessity for
 Operation of Motor Vehicle Carrier

MOTION FOR PERMISSION TO PRESENT
 SHIPPER WITNESS TESTIMONY BY
 AFFIDAVIT

Midlands Movers, LLC (“Midlands Movers” or “Applicant”) moves for permission to present the testimony of its shipper witness by affidavit. The Commission’s regulation concerning the proof required to support an application for a Certificate of Public and Convenience and Necessity for a Class E mover of household goods with statewide authority is found in S.C. Code Regs. 103-333.

Regarding the testimony of shipper witnesses, which are used to demonstrate that an applicant’s services will serve public convenience and necessity, the regulation states:

PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses, if the applicant applies for authority for more than three contiguous counties. If the commission determines that the public convenience and necessity is already being served, the commission may deny the application. The following criteria should be used by the commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

S.C. Code Regs. 103-133.1 (emphasis added)

In the interest of judicial economy, the Commission should allow the regulation's requirement of "use of a shipper witness" to be satisfied by the submission of an affidavit. The Commission's practice has been to allow applicants to take the testimony of shipper witnesses by deposition to be used at trial. *See e.g.* Application of Gamecock Moving, LLC, Docket No. 2017-103-T. There would be no substantive difference if an applicant were to submit the testimony by affidavit. The Office of Regulatory Staff, or an intervenor, would have the right to contest the adequacy of an affidavit if they believed it inadequate.

Challenges to adequacy of shipper witness testimony have been virtually nonexistent due to the Supreme Court's holding that mere anecdotal evidence is insufficient to challenge the "necessity" prong of an application. Welch Moving & Storage Co. v. Pub. Serv. Com., 301 S.C. 259, 261-62, 391 S.E.2d 556, 557 (1990). In Welch, the Court found:

Here, in deciding that grant of a certificate to Welch would not serve the public convenience and necessity, PSC relied exclusively upon the testimony of four licensed carriers from the midlands and upstate regions.

These carriers, potential competitors of Welch, testified that, due to a decrease in business, existing carriers were left with excess capacity to handle a greater number of moves. Additionally, one carrier testified that increased competition would cause cutbacks, resulting in less expensive but inferior quality service.

No expert testimony or statistical surveys were presented to indicate that the public convenience is being served. The carriers' testimony related primarily to concerns that increased competition would adversely affect their businesses. Although detriment to the income of existing carriers is relevant, it is not determinative and "should not in itself defeat an application for additional services." *Id.* (citation omitted).

Because of Welch, the presentation of shipper witness testimony has become a perfunctory exercise, and the current practice of presenting shipper witness testimony by live testimony or

deposition is unnecessarily expensive and inconvenient for all involved, including the Commission and its staff. Applicant submits that the submission of an affidavit could serve the same purpose without requiring Applicant to bring a witness to its hearing or hire a court reporter and pay counsel to attend a deposition. To illustrate how affidavit testimony could be presented, Applicant submits as Exhibit A an affidavit form which prompts the shipper witness to testify to the same matters typically covered on the stand or in live testimony.

Therefore, Applicant respectfully requests the Commission allow it to present the testimony of its shipper witness by affidavit.

Respectfully submitted,

s/ Charles L.A. Terreni

Date: August 30, 2018

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EXHIBIT A

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 201_-__-T

**AFFIDAVIT OF
SHIPPER WITNESS**

Being duly deposed and sworn, Affiant states:

1. My name is _____, and my address is _____.
2. I am giving this affidavit in support of the application of _____ for a Class E Certificate of Public Convenience and Necessity with statewide authority to move household goods to points and places throughout the state of South Carolina.
3. I am employed as/by _____ as a _____. I have been employed in this position since _____. My responsibilities include _____.
4. *(Optional)* I was previously employed by _____ as a _____ from _____ to _____.
5. I know of the need for household goods movers in South Carolina because

6. Based on my knowledge of the need for household goods movers in South Carolina, I believe the public interest would be served by granting a Certificate of Public Convenience and Necessity to _____.
7. I also would like the Commission to know the following information about the Applicant:

EXHIBIT A

Further Affiant sayeth not.

Affiant

SWORN TO ME THIS ____ DAY OF _____ 20 ____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2018-268-T
CERTIFICATE OF SERVICE

I, Carl E. Bell, hereby certify that I have, on this **30th day of August 2018**, served the **MOTION FOR PERMISSION TO PRESENT SHIPPER WITNESS TESTIMONY BY AFFIDAVIT** for Midland Movers, LLC, upon the parties listed below by electronic mail:

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Columbia, South Carolina
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